

**FLATHEAD COUNTY PLANNING BOARD
MINUTES OF THE MEETING
DECEMBER 21, 2005**

**CALL TO
ORDER**

A meeting of the Flathead County Planning Board was called to order at 6:00 p.m. Board members present were Charles Lapp, Don Hines, Jeff Larsen, Gene Dziza, Kathy Robertson, Tim Calaway, Frank DeKort, and Kim Fleming. Cal Scott had an excused absence. Jeff Harris, and George Smith represented the Flathead County Planning & Zoning Office.

There were approximately 25 people in the audience.

**PUBLIC
REVIEW**

Calaway reviewed the public hearing process for the public. This is a continuance for this proposal from the December 14, 2005 meeting. The public comment portion has been closed.

**FCMU/SPOKLIE
& HOOVER
FCMU-05-03**

A request by Spoklie & Hoover for a Major Land Use Review for operation of a commercial gravel site in the C.A.L.U.R.S (Canyon Area) Zoning District. The property is located at 1252 Belton Stage Road in West Glacier.

**PUBLIC
COMMENT**

Public comment was closed for this proposal, as testimony was accepted at the December 14, 2005 meeting.

**STAFF
PRESENTATION**

Jeff Harris recapped the location of this proposal. Staff evaluated the performance standards and guidelines, presented the findings, and recommended additional conditions, based on those findings, for Board consideration. Questions will be answered as they come up and Harris encouraged the Board to interrupt Staff with any questions they may have.

George Smith read the staff report according to statutory criteria. (Staff Report FCMU-05-03 is attached for review.) He stated CALURS is not a stand alone land use implementation tool.

The applicability we have a response to, CALURS specifically references Chapter 2, Section 2.1 of the Flathead County Zoning Regulations. Smith went through each of the 7 sections that apply to this particular proposal, and responded accordingly.

Smith restated the Middle Canyon Land Use Advisory Committee recommended denial of this proposal. He went through the timeline of this application, from the time it was received in the Planning Office.

Calaway asked if local delivery would be limited due to Charlie Johnsons' recommendations.

Smith responded, Johnsons' recommendations are to have an alternate route for the gravel trucks to go.

Calaway asked about the County Road Department stating the road is inadequate. He asked if Condition #7 meant Staff recommends paving that section of the road from the railroad tracks to the site. Smith replied the road would have to be brought up to County standards.

Smith read the supplemental conditions for the Board. There are 6 additional conditions Staff is recommending for consideration.

Calaway asked about the original 2 acres.

Smith showed the Board the DEQ records of the existing pit area. They discussed which 2 acres the original pit was permitted for.

Calaway stated the whole thing comes down to really lousy record keeping. How has this been allowed to expand with DEQ knowledge?

Harris commented the Grandfather Clause states if the pit is not used for 180 days, the Grandfather Clause does not apply. Acknowledging the Grandfather Clause is there, this pit was inactive for more than 180 days, and therefore the process needs to start all over.

Based on Staff's original assessment, we formerly received this as a violation. Staff went through DEQ records. The original permit, as first issued, was 1.5 acres. If this works, the applicant can have an active 2-acre pit, and will have to reclaim those two acres when he moves on to the next two acres, within 1 year.

Lapp asked about applying for a Conditional Use Permit. Is this the first step, then the applicant goes before the Board of Adjustment?

Staff replied that is correct. This Board is making a recommendation to the County Commissioners. If the County Commissioners say this proposal can proceed, the applicant will have to apply for a Conditional Use Permit.

Larsen commented the reason we are here is because of the Grandfathered Use, and if it complies then do we have to do anything? If we establish and accept the 2-acre use they can continue.

When the applicant went from 2 to 7 acres, it triggered the expansion clause in our zoning regulations. If everything remains status quo, they would need to apply for a Conditional Use permit if they want to expand more.

It was permitted for 2 acres, and now it is 7 acres; that is an expansion. The state allowed the expansion in error and they

acknowledge that fact. It was reassigned, and the reassigning of the Permit also required a document; it was a request for an expansion.

Lapp wanted clarification as to what the Board is voting on tonight. Are they voting to stop the whole thing, to expand it to 24 acres, or to allow the applicant to apply for a Conditional Use Permit?

Harris believed the Planning Board can make any recommendation they want. Typically, the Board approves, denies, or conditionally approves a proposal. That is how the regulations read. If the Board wanted to conditionally approve, and attach a condition relating to size or area of disturbance, it could be done that way.

Calaway talked about conditions regarding the active area of the pit, which is not to exceed 7 acres. The applicant can never have more than 7 acres at any given time.

Lapp asked about the additional conditions and if they would replace any of the original conditions, or if there would be 30 conditions.

Smith replied that there would be 30 if approved as written.

Harris addressed the Board pertaining to last week's discussion regarding CALURS, which prompted the Board to ask Staff to reformat the staff report. There was also a discussion the Staff Report could only consider the performance standards. He referred the Board back to the section that talked about that fact. He stated there was nothing in there saying the Planning Board can only discuss this report. Staff suggested, since the Planning Board is holding this public hearing, that they don't limit discussion to this report, but rather take into account public comment and testimony. The County Commissioners don't hold a public hearing, which is a key distinction between this Board and Commissioners, so bear that in mind as you go through the deliberation.

Larsen asked Mr. Logan and Mr. Stevens if they had seen the new report and if they have any comments.

APPLICANT REBUTTAL

Mr. Stevens commented the Planning Board has spent quite some time talking about size of pit and stated he may be able to enlighten them in regards to that. He referenced some emails from DEQ to Mr. Harris and George Smith that reference, specifically, that question.

The Planning Board refused to allow Mr. Stevens to distribute the emails, stating they have to stay on the agenda for this evening, which consisted of the revised Staff Report.

Mr. Stevens asked how the County Road Department can send comment after the public hearing, but not the DEQ?

Calaway said the Board had asked Staff to go back over the report, with specifics, and answer all the conditions/requirements they had regarding performance standards.

Stevens stated this is the fifth version of the Staff Report and specific standards need to be addressed. He disagreed with a few of the points in the newest version. He stated this is not a non-conforming use. He said there are 9 major land uses that are permitted, and this is one of them. This is not a non-conforming use and does not have to go to the Board of Adjustment for a Conditional Use Permit. He listed the major uses as written in CALURS. He stated gravel extraction is #4. He reiterated this does not go to the Board of Adjustment for a Conditional Use Permit and noted he feels the Staff Report is not accurate.

He agrees it should go through a major land use review process. There is a 60-day review process and he wants to use the December 10, 2005 date. He agrees with the Staff Report as far as performance standards. A statement he feels is trouble is the set of performance standards does not allow for adequate evaluation or determination of public issues (*Smith stated that was not in there anymore*). Mr. Stevens contention is they knew exactly what they were doing and addressed outdoor advertising, signs, road standards, sanitation, flood hazard areas, natural resources, protection of wetlands and natural water bodies, natural drainage, concerns with site development, and concerns with Highway 2. He stated they knew exactly what they were doing because these are pretty easy standards to accomplish, the reason being this is a highly political endeavor, if they would have made the standards more difficult to accomplish, they would have had a lot more difficulty trying to get this passed. This was a political endeavor and they knew exactly what they were doing, therefore he doesn't agree with that statement in the Staff Report.

Harris stated, for the record, we did pull that statement out because it doesn't address impacts of things pertinent to a gravel pit. Harris said to give you an idea, of more than 30 performance standards, 2/3 of them we couldn't address because they are not applicable in this situation; Staff is not suggesting every one has to be. It is difficult to get our arms around a meaningful evaluation based on performance standards that don't fit; even we don't know what we're dealing with.

Stevens agreed this has been a difficult undertaking. We have written regulations passed by County Commissioners, and we can not rewrite these; we have to address what is here not what we wish were here. When we get to access and road standards this is very simple. The report states all roads hereafter developed, providing access to commercial or industrial lots shall be developed and brought up to County standards. The correct response should have been not applicable, as there are no roads proposed. In regards to sanitation issues, everything looks okay. Natural resource protection is fairly

straight forward and we have no problems. Guidelines are pretty good, we suggest the reclamation should not be annual but per DEQ recommendation. There is no proposed building or structure that would hinder utilities. Site planning; there are no new structures proposed. We are basically on board with this new report. The only thing we have a dilemma with is, there are 9 major land uses permitted, but this is still considered a non-conforming use. Clearly, regulations deem this a permitted use so we could not go along with any of the brand new conditions that relate to the obtaining of a Conditional Use Permit. That doesn't apply because they pertain to a non-conforming use, therefore, he doesn't feel the need to go into the Conditional Use criteria. With permission, he asked to hand out conditions he feels are acceptable and appropriate.

Calaway wanted to see the conditions, and accepted them for the Board. He asked Mr. Logan if there were anything he wanted to add.

Mr. Logan wanted to point out the vision of the vast majority of the Middle Canyon area, which is pretty well summed up in the Canyon Plan. It doesn't include heavy industry, as is proposed by this expansion. After gathering community comments, they do not agree with this expansion and hopes the Board takes that into consideration. They are not sure about the Grandfather Clause, and understand why the Board accepted the Grandfathering of the gravel pit, but are not sure that is legitimately based on the fact the second permit was issued without a variance approval. The foundation of the second permit is weak and they don't agree with Grandfathering but understand if the Board wants to proceed with that; they will look into it further. He hopes that he is speaking on behalf of community members, since he hasn't had a chance to confer with any of them tonight. At the very least, they would like to be involved with conditions regarding noise, dust abatement and things like that. They firmly support individual property rights as long as the activity stays on their own property. Noise, dust and traffic are also concerns. The County Road Department said the road is inadequate for heavy gravel transport but it's been happening for over a year now and those are some of the things the community is concerned about and how much impact it has outside individual property owner's area. He hoped he represented the group well.

MAIN MOTION

Fleming made a motion seconded by Lapp to accept Staff Report FCMU 05-03 as findings of fact, as revised with amended conditions, and recommended approval to the County Commissioners.

BOARD DISCUSSION

Fleming stated ignorance of zoning is not an excuse; It creates problems for everyone. The rule is: expansion or change of ownership triggers a review. He should have gotten a permit and we should have been talking about this expansion 2 years ago. The fact that DEQ has issued a permit does not hold any weight because DEQ has made

mistakes in the past and the County has rules. The DEQ was wrong. They make mistakes like everybody does and that doesn't hold weight. The review should have gone in order. The structure or activity greater than 25 percent did trigger review and that is how we got here. Fleming stated she is mindful of zoning regulations, and although this doesn't have a bearing right now because we are not deciding on a Conditional Use Permit for gravel, and as Mr. Stevens has said those are all Conditional use Permits now, but we have to consider things like noise, dust, the condition of the road is a safety issue, water pollution, although regulated by DEQ and open mine act, you do have to consider all of that. That is why she is in favor of all of the conditions. We have to cover a lot of things related to noise, safety, air pollution, and the neighbors around there, they have a stake in their property too, so weighing one property owner against another. She felt that it is not a stand alone just to look in the regulations and thinks that is all they have to consider, there is a lot more to zoning in this County than what we might find in performance standards. The non-conforming use runs with the property no matter who is running it. It remains that to this day; It runs with the land not with the owners. Staff adequately covers all performance standards and it is too bad the Board didn't have this revised report sooner, however the Board did have the opportunity to go through it at the last meeting but it was 11:00 P.M., and nobody wanted to do that. She feels the Board received a better report by waiting. She feels that without conditions it violates the spirit of land use regulations and that is why we have this review.

Dziza stated he is not hung up on the original acreage and is not here to deliberate the issue. He stated the applicant wants to expand to 24-acres, and our job as a Board is to determine whether it is the appropriate area to do so. We all know we have to have a gravel pit where there is gravel. It doesn't look to him like a rural area. He knows this will have an impact on residents, but where we have rural areas supported by the fact that it's all 10-acre lots in that area. What makes this different than anywhere else in valley?

Harris replied he's not sure we can answer that, but he thinks Dziza is on the right track. The application looks at a specific use at a specific location. Part of the Planning Board's job is to analyze if it's compatible with the surrounding area, infrastructure, and public services. There are large lots and the whole area is residential. It's adjacent to Glacier Park which is arguably the economic anchor in the County. It's next to a wild and scenic river. There are tangible arguments as to the location. We are not opposed to gravel pits and each pit needs to be evaluated on its own merits. We think the road is substandard and needs to be significantly improved. We believe neighborhood impacts can be minimized by taking the northern route only, unless someone in the neighborhood needs gravel. Then it comes back to the private drive which is really a driveway to a residential

home. It does go by a home and being sensitive to the community character in that area, it is tough for the Planning Board to make a recommendation. From Staff's point of view, there are no other uses other than residential up there, other than the railroad running through the site. Its close proximity to Glacier National Park and the wide opposition by the entire community should factor into this. I think you need to consider all of that. For staff, the report stands. We think that use is incompatible for that area. There may be other areas that can use a gravel pit up there, we are not arguing that, or the death bridge issue, those are all issues outside of the central issue which is to look at that site, that use. Maybe it's an intensity issue, is an expansion of that site to 24 acres compatible with the surrounding residential character of the neighborhood. If the applicant would have come in with a 5-acre proposal, that intensity would have changed. We review the application on face value; 24-acres on that site is a significant use. Fortunately, the applicant did remove the batch plant, which would have been totally out of character. So there was some movement on the applicants' part to bring this more into the character with the neighborhood. You need to ask the right questions; Does it work in this neighborhood? That's the appropriate question.

Hines had ideas about modifying conditions. He stated that he would like to see: Condition #5 on the original Staff Report. He stated the Board should take a look at when crushing times could be coordinated to specific periods of time on the calendar that we would permit crushing that would be less intrusive on the environment and also the economics of tourists being in the area. Leaving the crushing to the first part of the year to about the third week of June, and not allowing processing after the third week of August, which is prime tourist season. They would have to stockpile prior to that date. That would also help with the activities of some of the wildlife passing through the area. In regards to Condition #7, about paving the road, there is no mention in any of the conditions about dedicating a bike path easement. We should have a rough path from the pit area out to Highway 2 along Belton Stage Road. Condition #11, in regards to driver orientation, we need to make sure there is a notation about exhaust brakes, or jake brakes being prohibited in the Canyon area. Condition #14 as far as reclamation, we should make sure the type of seed is certified, and probably work with Glacier National Park. They will have a better input on what to revegetate that area with. Condition #21, we should work into there they should reclaim the area presently before further operations take place.

Calaway asked staff questions regarding the reclamation plan the DEQ has on file. He wanted to know if the type of seed the applicant will have to use was specified.

Hines feels the type of seed should be native to that area, not just any type of seed.

Smith says we can condition the higher standard in terms of planting, and the time frame for re-plant.

Larsen stated he is still confused about the motion and exactly what we are trying to do here.

Fleming responded and clarified her thoughts.

Larsen needed clarification before voting on this motion. He had concerns with Condition #4 regarding the statement: at no time will the operations go beyond the Grandfathered area. He was confused with this 2-acre thing. On condition #13, the last sentence: no excavating or processing equipment shall be visible from any off-site location. We have seen pictures of the site, and there is no way to comply with that condition. At the end of Condition#14, we should probably replace Flathead County Planning & Zoning with DEQ. He wanted to hear more Board discussion, but thinks this ultimately will have to be reviewed based on the performance standards; that is what the County Commissioners are required to vote on.

DeKort needed clarification on the 2-acres. He agreed with the performance standards and the applicability to gravel pits. When he referenced the Canyon Plan, he felt it was obvious the expansion does not go with the plan. He is against the expansion, but if the applicant could move around the 2-acre site, within the constraints of the neighborhood plan, he might be ok with that. The conditions will have to state that.

Robertson questioned the Grandfathering of this site. One month before the new listing, Rod Samdahl, of the DEQ, did a report, which was exactly 12 years after another report had been done. On the report dated 2002 (*the one done in 1990 was a mess*) it states there was a great deal solid waste in the area and impacts on humans raised concern that this area contained hazardous materials. It was bonded, regarding the plan or map; this site exceeds permitted acreage. The whole pit has been used as a landfill. She feels the ground should be tested before anything happens. The second permit was issued illegally, which the DEQ has admitted to. She doesn't put much credit into that second permit.

Lapp questioned the Grandfathered area in conditions #2 and #4. He feels what Hines stated about condition #5 is a valid point. We need to not only clarify the amount of ground the applicant is using, but what the reclamation is on as well. How much area can they use, reserves included? Hours of operation need to be conditioned as well; there are other pits operating required to only do certain operations at certain times of the year. In regards to Condition #10, he thinks the Board should be a little more specific with saying exactly what needs to be

dust abated with regard to the whole process. Condition #13, remove Flathead County Planning & Zoning. Also if they will be stockpiling the material, berms shall be maintained to reduce noise and visual impact. He feels that is really important.

Fleming stated the Board could reword everywhere it says 'grandfathered' to read 'no more' or limited to 2-acres on the site.

Calaway stated there are 31 conditions and asked if the Board wanted to go through them individually.

The board discussed the mining area, in great length, as far as stockpiling reserves and actual mining area. The Board was confused as to how much is permitted.

Dziza commented the motion seems to follow the Staff recommendation, but during discussion it sounds like they are willing to expand the extraction area. He wanted clarification regarding the area that will be used for mining and stockpiling etc.

Calaway asked if Fleming recommended approval of the application. Fleming said yes with the revised report and with conditions as amended.

Fleming commented the applicant will have to give the legal description prior to applying for a Conditional use Permit and will have to identify metes and bounds.

Calaway stated some concerns the Board discussed each condition one by one and made amendments. The amendments are as follows:

#1-strike (5-3 with Fleming, DeKort, and Robertson dissenting)

#2-The applicant has 1 yr following the issuance of the Conditional Use Permit to commence operation or this Major Land Use Permit is void. (unanimous)

#3-ok

#4-Strike the last sentence/add-the applicant shall have no more than 2 acres of active gravel extraction area at any one time. At no time shall the total un-reclaimed area be greater than 7.6 acres. (unanimous)

#5- No processing operations (crushing and screening) are permitted from June 15 through August 21 and from October 21 through February 15 each year./Strike the last sentence. (unanimous)

#6-ok

#7- The applicant shall construct a 6-foot gravel bicycle bike path easement on the County easement along Belton Stage Road from US Highway 2 to the entrance of the site. (unanimous)

#8-ok

#9-Add 'Glacier National Park' to the list of relevant authorities. (6-2 with Larsen and Calaway dissenting)

#10-Dust abatement for the extraction, processing, and hauling will be performed consistently and conscientiously as per DEQ and Flathead County Environmental Health Regulations, to limit impacts to the surrounding properties and general air quality. (unanimous)

#11- Sole access to and from the site shall be via Belton Stage Road north to U.S. Highway 2 only. Belton stage Road south may be used for local delivery, between the site and Lake Five Road only. Engine Compression (Jake) brakes shall not be used on Belton Stage Road and the private access road. (unanimous)

#12-ok

#13-Remove last sentence. (unanimous)

#14-Add DEQ to the first sentence./Only certified seed type and plants recommended by Glacier National Park is to be used for re-vegetation. (unanimous)

#15-ok

#16-ok

#17-ok

#18- Signage as specified by the Flathead County Road Dept., will be posted along Belton Stage Road at the approach to the site to alert vehicular and pedestrian traffic to the presence of heavy truck travel at the intersection of the access road and Belton Stage Road. Applicant shall also place approved signs restricting the use of Engine Compression (Jake) brakes on Belton Stage Road. (unanimous)

#19-ok

#20-ok

#21-Add-The entire area must be cleaned up before any operations related to the pit resumes. (unanimous)

#22-ok

#23-ok

#24-ok

#25-ok

#26-ok

Supplemental Conditions:

#1-Add 'if required'. (unanimous)

#2-strike (unanimous)

#3-strike (unanimous)

#4-strike (unanimous)

#5-ok

Each of the conditions that were amended or struck from the report, were acted on by a motion seconded by another Board member. All actions were voted on and passed as indicated in parenthesis following the amendment.

Harris questioned the main motion. It was explained to him exactly what the Board was voting on.

MAIN MOTION
ROLL CALL

On a roll call vote the motion passed 6-2 with DeKort and Robertson dissenting.

ADJOURNMENT

The meeting was adjourned at approximately 9:30 p.m. on a motion by Robertson seconded by Lapp. The next meeting will be held at 6:00 p.m. on January 11, 2005.

Don Hines, President

Mary Sevier, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED: 2/8/06